

SENATE BILL 839

E2

EMERGENCY BILL

0lr2637
CF 0lr2715

By: **Senator Raskin**

Introduced and read first time: February 10, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Petition for Writ of Actual Innocence – Newly**
3 **Discovered Evidence**

4 FOR the purpose of altering certain provisions relating to the filing of a petition for a
5 writ of actual innocence; providing that a person may file a petition for a writ of
6 actual innocence only if the person is convicted of a felony, an attempt to
7 commit a felony, or a solicitation to commit a felony; establishing that a person
8 may file a petition if newly discovered evidence creates a substantial possibility
9 that a certain result would have been different; requiring the court to allow the
10 State to file a certain response in a certain period of time; establishing that the
11 only relief that may be granted from a certain petition is to set aside the verdict
12 and grant a new trial; providing that a petitioner in a certain proceeding has
13 the burden of proving certain grounds by a standard of clear and convincing
14 evidence; authorizing a person to file only a certain number of petitions within a
15 certain period of time; authorizing a person aggrieved by a certain order to
16 appeal to the Court of Special Appeals within a certain time period; authorizing
17 the court to stay an order and set bail under certain circumstances; authorizing
18 the Court of Special Appeals to affirm, modify, or reverse an order or remand a
19 case for further proceedings under certain circumstances; authorizing the Court
20 of Special Appeals to direct a political subdivision to pay certain costs under
21 certain circumstances; making this Act an emergency measure; and generally
22 relating to petitions for writ of actual innocence and newly discovered evidence.

23 BY repealing and reenacting, with amendments,
24 Article – Criminal Procedure
25 Section 8–301
26 Annotated Code of Maryland
27 (2008 Replacement Volume and 2009 Supplement)

28 BY adding to
29 Article – Criminal Procedure

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 8–302 and 8–303
2 Annotated Code of Maryland
3 (2008 Replacement Volume and 2009 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – Criminal Procedure**

7 8–301.

8 (a) [A convicted] **IF A person IS CONVICTED OF A FELONY, AN ATTEMPT**
9 **TO COMMIT A FELONY, OR A SOLICITATION TO COMMIT A FELONY, THE PERSON**
10 **MAY**, at any time, [may] file a petition for writ of actual innocence in the circuit court
11 for the county in which the conviction was imposed if the person claims that there is
12 newly discovered evidence that:

13 (1) creates a substantial [or significant] possibility that the result
14 [may] **WOULD** have been different[, as that standard has been judicially determined];
15 and

16 (2) could not have been discovered in time to move for a new trial
17 under Maryland Rule 4–331.

18 (b) A petition filed under this section shall:

19 (1) be in writing;

20 (2) state in detail the grounds on which the petition is based;

21 (3) describe the newly discovered evidence;

22 (4) contain or be accompanied by a request for hearing if a hearing is
23 sought; and

24 (5) distinguish the newly discovered evidence claimed in the petition
25 from any claims made in prior petitions.

26 (c) **THE COURT SHALL ALLOW THE STATE TO FILE A RESPONSE TO THE**
27 **PETITION WITHIN 60 DAYS.**

28 **(D)** (1) Except as provided in paragraph (2) of this subsection, the court
29 shall hold a hearing on a petition filed under this section if the petition satisfies the
30 requirements of subsection (b) of this section and a hearing was requested.

1 (2) The court may dismiss a petition without a hearing if the court
2 finds that the petition fails to state a claim or assert grounds on which relief may be
3 granted.

4 [(d)] (E) (1) In ruling on a petition filed under this section, the court may
5 set aside the verdict[, resentence,] AND grant a new trial[, or correct the sentence], as
6 the court considers appropriate.

7 (2) The court shall state the reasons for its ruling on the record.

8 [(e)] (F) A petitioner in a proceeding under this [section] SUBTITLE has the
9 burden of [proof] **PROVING THE GROUNDS ON WHICH RELIEF MAY BE GRANTED**
10 **BY A STANDARD OF CLEAR AND CONVINCING EVIDENCE.**

11 **8-302.**

12 (A) **FOR EACH TRIAL OR SENTENCE IMPOSED, A PERSON MAY FILE ONLY**
13 **ONE PETITION FOR RELIEF UNDER THIS SUBTITLE.**

14 (B) **A PETITION FOR RELIEF UNDER THIS SUBTITLE MAY BE FILED ONLY**
15 **WITHIN 5 YEARS FROM THE DATE OF THE PETITIONER'S DISCOVERY OF THE**
16 **NEWLY DISCOVERED EVIDENCE ALLEGED IN THE PETITION.**

17 **8-303.**

18 (A) **WITHIN 30 DAYS AFTER THE COURT PASSES AN ORDER IN**
19 **ACCORDANCE WITH THIS SUBTITLE, A PERSON AGGRIEVED BY THE ORDER,**
20 **INCLUDING THE ATTORNEY GENERAL AND A STATE'S ATTORNEY, MAY APPEAL**
21 **TO THE COURT OF SPECIAL APPEALS.**

22 (B) (1) **THE APPEAL SHALL FOLLOW THE FORM AND PROCEDURE SET**
23 **BY THE MARYLAND RULES.**

24 (2) **IF THE ATTORNEY GENERAL OR A STATE'S ATTORNEY FILES**
25 **AN APPEAL UNDER THIS SECTION, THE COURT MAY:**

26 (I) **STAY THE ORDER; AND**

27 (II) **SET BAIL FOR THE PETITIONER.**

28 (3) **AFTER HEARING AN APPEAL UNDER THIS SECTION, THE**
29 **COURT OF SPECIAL APPEALS MAY:**

1 **(I) AFFIRM, MODIFY, OR REVERSE THE ORDER APPEALED**
2 **FROM; OR**

3 **(II) REMAND THE CASE FOR FURTHER PROCEEDINGS.**

4 **(C) THE COURT OF SPECIAL APPEALS SHALL DIRECT THE POLITICAL**
5 **SUBDIVISION IN WHICH AN ORDER IS PASSED TO PAY THE NECESSARY COSTS**
6 **AND EXPENSES ASSOCIATED WITH ANY REVIEW UNDER THIS SECTION,**
7 **INCLUDING ALL COURT COSTS, STENOGRAPHIC SERVICES, AND PRINTING, IF:**

8 **(1) A PERSON SEEKS REVIEW UNDER THIS SECTION WITHIN 30**
9 **DAYS AFTER JUDGMENT;**

10 **(2) THE COURT OF SPECIAL APPEALS HEARS THE APPEAL UNDER**
11 **THIS SECTION; AND**

12 **(3) THE COURT OF SPECIAL APPEALS FINDS THAT THE PERSON**
13 **IS UNABLE TO PAY THE COSTS OF THE REVIEW.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
15 measure, is necessary for the immediate preservation of the public health or safety,
16 has been passed by a yea and nay vote supported by three-fifths of all the members
17 elected to each of the two Houses of the General Assembly, and shall take effect from
18 the date it is enacted.